THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1587 of 2001
Old F.A.F.O. No. 477 of 1997

Nand Lal S/O Shri Chet Ram,
R/O 31 Inder Road, Dehradun
(Claimant)

… **Appellant.**

Versus

Uttar Pradesh Road Transport Corporation, Hill Depot,
Dehradun through its Regional Manager, Gandhi Road,
Dehradun.

… **Respondent.**

Sri D.C.S.Rawat, Advocate, learned counsel for the appellant.
Mr. Shailendra Kumar Agrawal holding brief of Sr. A.N.Sharma, Advocate, learned counsel for respondent.

Date April 20, 2006.

(Hon'ble B.S.Verma, J.)

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and award, dated 5-3-1997, passed by the Motor Accident Claims Tribunal/III Additional District Judge, Dehradun **(*in short the Tribunal*)** in Motor Accident Claim Case No. 182 of 1996, Nand Lal Vs. U.P.S.R.T.C. whereby compensation of Rs. 45,000/- payable within one month has been awarded to the claimant-appellant against the respondent. Rider of 12% interest has been put in case of default from the date of judgment. Aggrieved, the claimant has come up in appeal for enhancement of the compensation amount.

Brief facts of the case are that the claimant Nand Lal earning Rs. 800/- per month and driver by profession suffered injuries near Araghar bus stop on Narendra Nagar-Dehradun motor road in a motor vehicle accident on 21.12.1985 involving bus No. URM-2340. The report of the accident was lodged at Dalanwal police station. In the accident, the pelvis bone of the claimant got fractured and he became permanent disabled. He was treated at Doon Hospital for about one month and he incurred expenses of Rs.

10,000/- and still he is undergoing treatment. The claimant has became incapacitated to drive and his earning capacity was reduced to Rs. 400/- per month. Compensation of Rs. 2,40,000/- was claimed on different heads.

The O.P. U.P.S.R.T.C. contested the claim petition by filing its written statement. It denied all the allegations made in the claim petition and asserted that no accident occurred by the alleged bus and the claimant did not suffer any injury.

On the pleadings of the parties, the learned Tribunal framed as many as five issues in the case. The claimant in support of his case filed documentary evidence and examined himself and witnesses Ratanlal, Dr. A. Nagaich and Dr. H.K.Joshi as P.Ws. 1 to 4. On the other hand, the O.P. examined conductor of bus Kali Charan as D.W.1. The learned Tribunal after perusing the evidence on record, took up Issue Nos. 1, 2 and 3 together and came to the conclusion that on 21.12.1985 the claimant suffered injuries in the motor vehicle accident due to rash and negligent driving by thedriver of bus No. U.R.M.-2340. On Issue Nos. 4 and 5, the learned Tribunal has held that the claimant was entitled to compensation of Rs. 45,000/-. Accordingly, the claim petition was decreed vide impugned award dated 5.3.1997.

The impugned award has been assailed mainly on the ground that the claimant incurred more than Rs. 20,000/- towards medical expenses but the Tribunal has awarded only Rs. 10,000/- and the finding of the Tribunal on the quantum of award is not based on evidence led by the claimant. The compensation awarded is inadequate.

I have heard learned counsel for the parties and perused the material on record including the lower court record.

So far as the contention that the learned Tribunal has not considered the evidence while awarding compensation towards medical expenses is concerned, it is pertinent to mention that the clalimant has filed bills and vouchers of less than Rs. 1000/-. Even in his statement as P.W.1, he has not specified the amounts of medical expenses incurred by him. The learned Tribunal has considered all the material on record while coming to the conclusion that the claimant was entitled to medical expenses of Rs. 10,000/-. The learned counsel for the appellant could not indicate the infirmity committed by the learned Tribunal on this score.

The learned Tribunal has also considered the deficiency caused to the claimant in his earning capacity. The claimant has not produced any disability certificate issued by the Medical Board and only the P.W.4, Dr. H.K.Joshi has stated the disability of the claimant to the extent of 15%. In order to prove the disability, the claimant ought to have filed proper certificate issued by the Medical Board. The learned Tribunal on the basis of 15% disability awarded lump sum amount towards pecuniary loss to the claimant. In my view, this amount is just and fair.

The claimant has also been awarded compensation towards physical and mental agony to the tune of Rs. 20,000/-.

Taking in consideration the evidence led by the claimant-appellant coupled with the facts and circumstances of the case, I am satisfied that the learned Tribunal has rightly awarded total compensation of Rs. 45,000/- to the claimant, which appears to be just compensation.

It has been contended on behalf of the appellant that the learned Tribunal has committed illegality in not awarding the interest to the claimant. This argument has no merit. The learned Tribunal has found that the claimant was himself negligent in not producing the witnesses and due to his conduct, a period of eight years was

involved in concluding the evidence of the claimant. The Tribunal had also observed that the claimant was not serious in prosecuting his case. For these reasons, the Tribunal has refused to order payment of interest from the date of filing of claim petition. In the facts and circumstances of the case, the Tribunal has rightly refused payment of interest.

No other point was urged or argued before me in this appeal.

For the reasons and discussion aforesaid, the appellant has failed to make out a case for enhancement of compensation. The appeal has no force and is liable to be dismissed.

The appeal is hereby dismissed. The impugned judgment and award dated 5-3-1997 is affirmed. No order as to costs.

(B.S.Verma, J.)

RCP